Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

No. 79-1631

DEMOCRATIC PARTY OF THE
UNITED STATES OF AMERICA and
DEMOCRATIC NATIONAL COMMITTEE,

Appellants,

v.

WISCONSIN ex rel. BRONSON C. LA FOLLETTE, and
DEMOCRATIC PARTY OF WISCONSIN,

Appellees.

ON APPEAL FROM THE
SUPREME COURT OF WISCONSIN

REPLY TO APPELLANTS' SUPPLEMENTAL BRIEF

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Appellants mistakenly suggest the decision of the Wisconsin Supreme Court is contradicted by the decision of the United States District Court for the Western District of Michigan in Ferency v. Austin, No. G80-193 CAS (April 21, 1980).

Ferency is inapposite. The distinction between the statute at issue in Ferency and the instant case is fundamental. In Ferency, as in Cousins v. Wigoda, 419 U.S. 477 (1975) (direct voter selection of delegates), voters select the persons who choose the delegates who not only participate in the National Party Convention presidential nominee selection process, but also the entire range of internal party matters. Under Wisconsin law, the

voters determine only candidate proportional representation. The State Democratic Party selects the individual delegates. Thus, the Ferency decision concerns a situation different in kind.

Moreover, the portion of the Michigan law the court found constitutionally offensive was its failure to restrict voting in the Democratic primary to Democrats.

> It is entirely permissible and reasonable for the Democratic Party to decide that only Democrats should vote in primary elections designed to select delegates to a national convention. The Michigan statute does not permit that. For that reason, I find it to be unconstitutional as applied to the Democratic Party in this case.

(Slip. op., at 15-16.) The court noted that under Michigan law a Republican or a Democrat could vote in either the Republican or the Democratic primary. (Slip. op., at 2.) Had such "cross-over voting not been allowed, Michigan's statutory scheme might well have been constitutional." (Slip. op., at 15.)

In contrast to Michigan's law, Wisconsin provides that only Democrats may vote in the Democratic primary. The Wisconsin Legislature intended that "voters should vote only on the ballot of the party they claim as theirs and that they will not vote on the ballot of a party with which they do not identify." State ex rel. La Follette v. Democratic Party, 93 Wis. 2d 473, 504, 287 N.W.2d 519, 532 (1980). (A-Ap. 23a). In fact, the Legislature enabled voters to select an uninstructed delegation "'in order to reduce the temptation of cross-over voting.'" 93 Wis. 2d at 504-05, 287 N.W.2d at 533. (A-Ap. 23a).

Consequently, Ferency distinguished laws like Wisconsin's, which restrict voting in Democratic primaries to Democratic voters, saying they "might well be constitutional." (Slip. op., at 15.)

Further, for purposes of its analysis, the Wisconsin court said "we accept the National Party's assertion that it has a protected associational interest in ensuring that only Democratic voters participate in selecting the Democratic presidential candidate." 93 Wis. 2d at 499, 287 N.W.2d at 530. (A-Ap. 18a). It found, however, that upon analysis of the record, the National Party could not demonstrate that the claimed burden on these associational rights was other than "speculative, remote and minimal." 93 Wis. 2d at 511, 287 N.W.2d 519 (1980).

CONCLUSION

It is respectfully submitted that this Court should grant the motion to dismiss or affirm.

Dated at Madison, Wisconsin, this 17th day of June, 1980.

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